Kansas City Terminal Elevator Company and American Federation of Grain Millers, AFL-CIO, Local Union No. 16, Petitioner. Case 17-RC-9480

23 March 1984

DECISION ON REVIEW AND DIRECTION OF ELECTION

By Chairman Dotson and Members ZIMMERMAN AND HUNTER

On 30 November 1982 the Regional Director for Region 17 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate the petitioned-for unit of all fulltime and regular part-time production and maintenance employees (with certain exclusions) employed at the Employer's Elevator No. 2 located in Kansas City, Missouri. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision. The Employer asserted that the Regional Director's findings on the factual issues were clearly erroneous; that he departed from established Board precedent; and that the uncontradicted evidence at the hearing establishes that the only appropriate unit for bargaining is a unit encompassing employees at both the Employer's Elevators Nos. 1 and 2.

The National Labor Relations Board, by telegraphic order dated 29 December 1982, granted the request for review. The Board, by a three-member panel, has reviewed the entire record in this case including the parties' submissions with respect to the issues under review and makes the following findings:

The Employer, Kansas City Terminal Elevator Company, is jointly owned by Far-Mar-Co., Inc. and the Missouri Farmers Association. Prior to 1 September 1982 Far-Mar-Co. operated and managed the entire business of the Employer which consisted of two grain storage elevators. While Far-Mar-Co. was managing the business, on 15 September 1981 Petitioner was certified as the exclusive bargaining representative of all full-time and regular part-time production and maintenance employes at Elevator No. 1. Thereafter, the Employer refused to bargain pending a judicial test of certification, contending that the only appropriate unit should include all production and maintenance employees at both facilities. The Board found the Employer in violation of Section 8(a)(5) and (1) of the Act, and its bargaining order was judicially enforced. See Kansas City Terminal Elevator Co., 260

NLRB 611 (1982), enfd. 697 F.2d 269 (8th Cir. 1983).

Thereafter on 1 September 1982 the Employer assumed direct responsibility for the management of its elevators. Elevator No. 1 is located at 5801 North Birmingham Road, and Elevator No. 2 is located at 1031 North Topping, both in Kansas City, Missouri. The facilities are on opposite sides of a river and are 1 mile apart by water and 4 miles apart by road. Of an estimated 33 employees, 18 work at Elevator No. 1 and 15 work at Elevator No. 2.

On 29 October 1982 Petitioner filed a petition for an election seeking to represent the production and maintenance employees at Elevator No. 2 in a separate unit. The Employer at the hearing, however, contended that the only appropriate unit was one that would include employees at both elevators. In his decision, the Regional Director noted the Employer's evidence of changes in its managerial structure and operations which occurred after the unit determination at Elevator No. 1. However, the Regional Director determined that he was precluded from finding a multifacility unit to be the only appropriate unit in view of his previous unit determination regarding Elevator No. 1. On review, the Employer contends that the Regional Director's decision is erroneous based on the administrative changes it has made which have centralized labor relations policies and significantly reduced the autonomy of the superintendent at Elevator No. 2. We find merit in the Employer's contentions for the reasons set forth below.

The elevators are now administratively centralized.1 General Manager Herbert Caudill has overall responsibility for administrative operations and labor relations.2 He annually submits to the Employer's board of directors a joint budget of operating costs for the elevators. Caudill determines the labor relations policies which include safety procedures, work and disciplinary rules, and payroll policy. These policies are given to the superintendent at each elevator and are made available to every employee. There is no disparity in the application of these policies between the facilities.3 Further, Caudill visits the elevators several times a week to discuss with the respective superintendents such matters as efficiency of operations, employment problems, and possible mechanical break-

¹ The two facilities are covered by a single Federal license which allows for the storing of grain and issuing of warehouse receipts.

² Hebert Caudill assumed this responsibility after Far-Mar-Co.'s management contract was canceled 1 September 1982.

³ It is undisputed that at the time of the hearing wages for comparable job classifications were identical between the facilities and benefits were applied uniformly by the Employer.

downs. Similarly, he has a standard procedure for meeting Thursday mornings at Elevator No. 1 to discuss with the superintendents of both facilities long-range plans for loading and unloading grain shipments.

With regard to the day-to-day operations of these facilities, the Employer presented uncontradicted evidence that Louis Barrack, superintendent at Elevator No. 2, possesses little autonomy over the operations conducted there.4 Rather Lloyd McDaniel, the Employer's general superintendent, controls the day-to-day decision-making at both elevators.5 While his office is located at Elevator No. 1, McDaniel spends several afternoons each week at Elevator No. 2 observing and directing operations and employees. Barrack reports every morning to Elevator No. 1 to receive instructions from McDaniel concerning loading, unloading, cleanup, and maintenance work at his facility. Hiring of employees is a matter within the sole control of McDaniel. Although Elevator No. 2 has a personnel office, Barrack has no authority to hire without McDaniel's participation and approval.6 McDaniel also determines when to discipline employees for infractions of company rules. Indeed, after observing employees at Elevator No. 2 violating work rules, McDaniel has instructed Barrack to reprimand employees for such misconduct. Furthermore if Barrack feels it necessary to suspend or discharge an employee, he must submit a written report for McDaniel's approval.7 Barrack thus has no independent authority to effectuate any disciplinary action. Similarly McDaniel, within budget guidelines, makes the ultimate decisions as to promotions, wage increases, and layoffs. Overtime at Elevator No. 2 generally is authorized in advance by McDaniel.8

Based on the above, we find that the Regional Director incorrectly concluded that he was precluded by the Board's earlier unit determination from finding that a multifacility unit is in this case, hence the requested unit at Elevator No. 2 constituted a separate appropriate unit. In so finding, we rely on the evidence of administrative centraliza-

tion of labor relations and the lack of supervisory autonomy at Elevator No. 2.9 Here both facilities have the same labor relations policies. However, what is most relevant in our analysis is whether or not the employees at Elevator No. 2 perform their daily work under the autonomous supervision of Superintendent Louis Barrack. As noted, Lloyd McDaniel, not Barrack, has total control over the day-to-day operations at this facility. He visits the facility several times a week to review operations and instructs Barrack as to its daily management. He also determines matters of discipline, discharge, and promotion. In addition, employees at Elevator No. 2 depend on McDaniel to approve their raises and overtime. Since matters of major concern to these employees are handled by McDaniel, we conclude that Barrack lacks significant autonomy as to daily operations. In view of the above, we find that the requested unit of employees at Elevator No. 2 is not a separate appropriate unit. Rather we find that these employees share a community of interests with the production and maintenance employees at Elevator No. 1.

Therefore, we find that the production and maintenance employees at Elevator No. 2 should be given the opportunity by a self-determination election to express their desires with respect to being included in the existing unit represented by the Petitioner and we shall direct an election in the following voting group:

All full-time and regular part-time production and maintenance employees and leadmen, employed by the Employer at its Kansas City Terminal Elevator No. 2, located at 1031 North Topping, Kansas City, Missouri; excluding office clerical employees, professional employees, guards and supervisors as defined by the Act.

If a majority of the employees in the abovevoting group cast their votes for the Petitioner, they will have indicated their desire to be a part of the existing production and maintenance unit currently represented by the Petitioner, and the Petitioner may bargain for such employees as part of that unit.¹⁰ If the employees indicate they do not

⁴ The parties stipulated that Louis Barrack is a supervisor within the meaning of Sec. 2(11) of the Act.

⁵ McDaniel was officially given direct control and responsibility over the daily operations of the facilities on 1 September 1982.

⁶ The one employee hired at Elevator No. 2 since the managerial change was hired after Barrack told McDaniel that an employee was needed. Thereafter, both men together reviewed the application and the employee was hired after McDaniel instructed Barrack to do so.

In its brief, the Employer correctly asserts that General Manager Caudill must sign each written disciplinary action. However, the record evidence indicates that Caudill has never directly disciplined or discharged an employee and that McDaniel has total authority to implement these rules.

⁸ Barrack does have authority to grant overtime if the need arises after McDaniel has gone for the day and authorization is otherwise impossible.

See Petrie Stores Corp., 266 NLRB 75 (1983): Accord: Beckett Aviation Corp., 254 NLRB 88 (1981); Super X Drugs, 233 NLRB 1114 (1977).

¹⁰ For purposes of directing the instant self-determination election, we need not consider what effect a majority vote by the employees at Elevator No. 2 to join the existing unit would have on the scope or continued effect of a previously executed collective-bargaining agreement applicable to employees in the original unit. However, because of our finding herein that employees at Elevator No. 2 are not a separate appropriate unit, the Employer may insist during negotiations following their inclusion in the existing unit that all employees be covered by a single bargaining agree-

wish to be represented by the Petitioner, they shall remain unrepresented.

[Direction of Election and Excelsior paragraph omitted from publication.]